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6 TOYOTA MOTOR CREDIT CORPORATION

7 UNITED STATES BANKRUPTCY COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
9

10 In Re: Case No. 18-23503-C-13

11 MICHAEL C. YANG, D.C. No. APN-1

12 Debtor.

13 MOTION BY SECURED CREDITOR,  
TOYOTA MOTOR CREDIT  
CORPORATION, FOR RELIEF FROM  
14 AUTOMATIC STAY RE: 2017 TOYOTA  
SIENNA, (V.I.N. 5TDYZ3DC9HS839877)  
15 [11 U.S.C. § 362(d), 11 U.S.C. § 362(d)(1),  
Local Rule 4001-1, Local Rule 9014-1]

16 Date: October 16, 2018  
17 Time: 1:30 p.m.  
18 Judge: Christopher Klein  
19 Ctrm: #33, 6<sup>th</sup> Floor,  
501 I Street,  
20 Sacramento, CA

21  
22 This is a core proceeding as defined by the United States Bankruptcy Code and this  
23 Secured Creditor consents to a final Order or Judgment by the above-entitled Court.

24 The above-entitled Court has jurisdiction over the subject matter of this action  
25 pursuant to 28 U.S.C. § 157(a), et seq. and 28 U.S.C. § 1334, et seq.

26 PLEASE TAKE NOTICE that as specified above, TOYOTA MOTOR CREDIT  
27 CORPORATION (hereinafter referred to as "Secured Creditor"), a Secured Creditor of  
28 Debtor(s), MICHAEL C. YANG (hereinafter referred to as "the Debtor"), will move this

1 Court to vacate the automatic stay entered in this proceeding as it pertains to the 2017 Toyota  
2 Sienna (V.I.N. 5TDYZ3DC9HS839877) (hereinafter referred to as the "property"), so that  
3 Secured Creditor's secured interest in and to the property may be repossessed or otherwise  
4 disposed of in any manner permitted by the laws of the State of California.  
5

6 PLEASE TAKE FURTHER NOTICE that there is no provision under the prevailing  
7 contractual agreement or under California State law which requires Secured Creditor to send  
8 monthly invoices or payment coupons and Secured Creditor contends that upon assignment  
9 of the contract to Secured Creditor Debtor was, in the normal course of business, informed of  
10 the identity of the holder of the contract, the amount of the monthly payment, the date upon  
11 which the monthly payment is due, and the address to which monthly payments should be  
12 sent. Additionally, Secured Creditor contends that Debtors was also admonished not to rely  
13 upon the receipt of monthly statements or payment coupons in order to make the monthly  
14 payments.  
15

16 PLEASE TAKE FURTHER NOTICE that prior to filing this Motion For Relief From  
17 Automatic Stay, counsel for Secured Creditor sent counsel for Debtor, and the Trustee a notice  
18 setting forth the amounts currently past due. A true and correct photocopy of the  
19 aforementioned notice is filed separately and is incorporated herein by reference.  
20

21 This Motion is made on the grounds that the prevailing contractual agreement is in  
22 default and that Secured Creditor is without adequate protection because Debtor is delinquent  
23 in monthly payments to Secured Creditor and Debtor is still in possession of the property.

24 Moreover, this Motion is brought pursuant to 11 U.S.C. § 362(d)(1) for "cause" based  
25 upon Debtor's failure to make the required post-Petition payments. As set forth in In Re Ellis,  
26 60 B.R. 432, failure to make required payments constitutes "cause" to vacate the pending  
27 automatic stay provisions.  
28

1           Accordingly, Secured Creditor cannot be assured of repayment of the outstanding  
2 balance on the account which is the subject hereof nor can it be assured of the proper  
3 operation, care, and/or maintenance of the property. Therefore, Secured Creditor lacks the  
4 adequate protection it is entitled to receive pursuant to the applicable provisions of 11 U.S.C.  
5 § 362.  
6

7           Secured Creditor will move the above-captioned Court to exercise its jurisdiction in  
8 this matter and grant Secured Creditor immediate relief from the pending automatic stay  
9 provisions which will allow Secured Creditor to take immediate possession of the property  
10 and dispose of the same during the normal course of business.

11           Secured Creditor will further move the above-captioned Court to terminate the  
12 pending automatic stay provisions to allow Secured Creditor to send to any party or parties  
13 protected by the stay under the following, applicable provisions of 11 U.S.C. § 362, and any  
14 and all notice required by State and/or Federal law, regulation or statute.  
15

16           Pursuant to *Federal Rules of Bankruptcy Procedure, Rule 4001(d)*, a true and correct  
17 photocopy of the [proposed] Order setting forth Secured Creditor's request for relief is filed  
18 separately herewith and is incorporated herein by reference.

19           Also, Secured Creditor will move the Court to grant such other and further relief as  
20 the Court may deem just and proper.  
21

22           This Motion is based on the Notice of Motion, the Motion, the Declaration of Rahnae  
23 Spooner filed herewith, the pleadings and papers on file in these proceedings and such further  
24 oral and documentary evidence as may be presented at the time of hearing on this matter.

25           WHEREFORE, Secured Creditor respectfully prays that this Court:

26           1.       Vacate the automatic stay provisions effected under 11 U.S.C. § 362, along  
27 with any and all other stays which might be in effect, so as to allow Secured Creditor to enforce  
28 its rights and remedies under the parties' original, contractual agreement and pursuant to

1 Debtor's default, and thereby allow Secured Creditor to gain immediate possession of the  
2 property and dispose of the same in a commercially-reasonable sale;

3           2.       Terminate the pending automatic stay provisions to allow Secured Creditor to  
4 send to any party or parties protected by the stay under the following, applicable provisions  
5 of 11 U.S.C. § 362, and any and all notice required by State and/or Federal law, regulation or  
6 statute;  
7

8           3.       Allow Secured Creditor to file or amend its unsecured claim to allow Secured  
9 Creditor to receive, or otherwise collect, any deficient amount that may exist on Debtor's  
10 account after sale of the property;

11           4.       Grant such other and further relief as the Court may deem just and proper.  
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13       Dated: September 11, 2018

LAW OFFICES OF  
AUSTIN P. NAGEL

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16  
17       BMBK.927

\_\_\_\_\_/s/ Austin P. Nagel  
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